STATE OF MICHIGAN

COURT OF APPEALS

JAMES RIVER PAPER COMPANY, INC., Plaintiff-Appellee,	UNPUBLISHED June 20, 2000
v	No. 214884 Court of Claims
DEPARTMENT OF TREASURY, Defendant-Appellant.	LC No. 92-014540-CM

Before: Zahra, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right the amended order of the court of claims requiring defendant to pay a single business tax refund to plaintiff in the amount of $90,464, plus statutory interest. The court of claims granted summary disposition to plaintiff and entered this order on the basis of the court's interpretation and application of the Single Business Tax Act (SBTA), MCL 208.1 *et seq.*; MSA 7.558(1) *et seq.*, explaining that "the statute should not be . . . interpreted to require the taxpayer to attribute the depreciation add back where the taxpayer did not receive a [capital acquisition deduction]." The court of claims reasoned that the statute could be construed this way and that this construction was consistent with the overall scheme of the statute. Despite the logic of the court of claims' decision, we conclude that the unambiguous language of the statute does not provide for this interpretation. We hold that the SBTA requires plaintiff to add back depreciation when determining its tax base under MCL 208.9; MSA 7.558(9), and thus we reverse.

In this single business tax case, plaintiff, a Virginia corporation that transacted business in Michigan[1] during the relevant period, the 1985 tax year,[2] requested a refund on single business taxes for

[1] Although not relevant to this appeal, we note that James River Corporation of Virginia was the parent corporation of plaintiff. A 1985 merger and reorganization resulted in the transfer of assets to plaintiff. After the merger, plaintiff was a multistate taxpayer subject to Michigan tax liability because two of the merged corporations whose assets plaintiff acquired had locations in Michigan.

[2] The 1985 tax year began April 29, 1985, and ended April 27, 1986.

that tax year. Defendant denied this request, and thereafter plaintiff filed suit in the court of claims seeking to obtain a single business tax refund plus interest.

Plaintiff moved for summary disposition, focusing its argument on its alleged entitlement to the capital acquisition deduction (CAD) with regard to its construction-in-progress assets obtained in a statutory merger. As an alternative, plaintiff argued that if it is not entitled to the CAD, it should not be required to add back depreciation when calculating its tax base. Defendant, in turn, filed a cross-motion for summary disposition and principally argued that plaintiff was not entitled to the CAD. At the hearing on the parties' motions for summary disposition, the court of claims construed the CAD provision, MCL 208.23(a); MSA 7.558(23)(a), in a manner favorable to defendant; that is, it concluded that the SBTA did not allow plaintiff to take the CAD for assets that it acquired during a 1985 merger. However, the court of claims agreed with plaintiff's "fall-back" position that it was not required to add back the depreciation of the assets acquired in the merger to its single business tax base where plaintiff did not receive the CAD.[3]

This Court reviews the trial court's decision to grant or deny summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Resolution of the issue on appeal also requires this Court to engage in statutory interpretation. We review questions of law, including statutory interpretation, de novo. *Messenger v Dep't of Consumer & Industry Services*, 238 Mich App 524, 530; 606 NW2d 38 (1999). Recently, in *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999), our Supreme Court summarized the well established rules of statutory construction:

> The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature. This task begins by examining the language of the statute itself. The words of a statute provide "the most reliable evidence of its intent...." If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted. Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. [Citations omitted.]

On appeal, defendant argues that the court of claims erred in granting plaintiff summary disposition because the court's ruling that plaintiff was not required to add back depreciation deducted on its federal tax return pursuant to MCL 208.9(4); MSA 7.558(9)(4) was based on an erroneous interpretation of the clear language of the SBTA. In response to defendant's argument, plaintiff contends, and the court of claims agreed, that it should be exempted from the depreciation add back requirement of MCL 208.9(4)(c); MSA 7.558(9)(4)(c) as to the construction-in-progress assets it obtained in a 1985 statutory merger because it did not take the CAD for these assets. Plaintiff maintains that its interpretation of the statute is necessary to avoid double-taxation of the construction-

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[3] See MCL 208.9(4)(c); MSA 7.558(9)(4)(c).

in-progress assets. Plaintiff alleges that double-taxation would occur if defendant does not allow plaintiff to take the CAD, and yet requires plaintiff to add back the assets' depreciation pursuant to MCL 208.9(4)(c); MSA 7.558(9)(4)(c) to arrive at its tax base and also requires plaintiff to "recapture" the CAD when it sells the assets in question, pursuant to MCL 208.23b(a); MSA 7.558(23b)(a).[4]

We find that the court of claims erred in holding that plaintiff is exempt from adding back the depreciation of the construction-in-progress assets to its profits to arrive at its tax base, which MCL 208.9(4)(c); MSA 7.558(9)(4)(c) explicitly requires, because there is no express provision in the SBTA that supports this conclusion. MCL 208.9(4)(c); MSA 7.558(9)(4)(c) states clearly that to the extent deducted in arriving at federal taxable income, a taxpayer must add back the value of depreciation of personal property to its profits in order to arrive at its pre-apportionment tax base, and thus this provision must be enforced as written. See *Sun Valley Foods*, *supra*. The SBTA does not provide that the add back of depreciation is contingent on whether the taxpayer took the CAD for the personal property at issue.

The court of claims' view of the add back provision ignores the fact that the single business tax is a consumption-type value-added tax that taxes the user of economic inputs, such as tangible personal property. See *Mobil Oil Corp v Dep't of Treasury*, 422 Mich 473, 496 n 14, 498; 373 NW2d 730 (1985). Under this theory, the question asked is not who owns the input, but who *used* the input and combined it with others in order to add value to the economy. *Id.* at 498. In the case of tangible personal property, depreciation represents that portion of the value of the personal property that was used in production; it is an "input" which, in combination with other economic inputs, adds value to the economy. See *id.*, 496 n 14. Thus, the value of the depreciation of personal property is included in the taxpayer's pre-apportionment tax base for the purposes of the SBTA. Plaintiff is incorrect in its attempt to portray its single business tax liability as contingent on whether it took the CAD for the assets at issue. Nothing in the statutory scheme links these two separate provisions together, making one dependent on the other.[5] Thus, because the statutory language controls, see *Sun Valley*, *supra*, the trial court erred in granting summary disposition to plaintiff.

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[4] On appeal, both parties focus attention on the court of claims' decision with regard to the CAD; however, the only issue raised on appeal is whether plaintiff is entitled to forgo adding back depreciation as an adjustment to its tax base. Because plaintiff makes no cross-appeal with regard to the court of claims' determination that plaintiff was not entitled to take the CAD, plaintiff's argument that plaintiff is entitled to the CAD is not properly before us. Further, although plaintiff addresses a sub-argument to the proper application of § 23b, the "recapture" section, defendant does not address this section, the judgment does not address this section, and the tax refund ordered does not appear to relate to this section. We therefore conclude that the operation of § 23b is not properly before us.

[5] Indeed, the provision in effect in 1986, impliedly recognizes that the add back of depreciation deducted in arriving at federal taxable income is not tied to the CAD. The statute provided:

(4) Add, to the extent deducted in arriving at federal taxable income:

(continued...)

Reversed.

/s/ Brian K. Zahra
/s/ Helene N. White
/s/ Joel P. Hoekstra

(...continued)

* * *

> (c) Any deduction for depreciation, amortization, or immediate or accelerated write-off related to the cost of tangible assets for which a capital acquisition deduction was claimed in any tax year pursuant to section 23, and for the 1976 tax year, 72%, *and for the 1977 tax year and subsequent tax years 100% of any deduction for other depreciation*, amortization, or immediate or accelerated write-off related to the cost of tangible assets. [Emphasis supplied.]

Further, we reject plaintiff's argument that in interpreting § 23(a), the CAD provision, defendant placed a gloss on the word "cost" that requires that the same word, when used in § 9(4)(d), the add back provision, be construed as excluding the depreciation at issue here. Defendant did not place a gloss on the word "cost"; rather, it interpreted the words "paid or accrued" in that section.